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OFFICE OF PETITIONS

In re Application of	:	
Cooper et al.	:	
Application No. 10/690,785	:	ON PETITION
Filed: October 21, 2003	:	
Attorney Docket No. 0013-00022-04	:	

This is a decision on the renewed petition under 37 C.F.R. § 1.137(b), filed October 21, 2008, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to timely pay the issue and publication fees on or before January 5, 2005, as required by the Notice of Allowance and Fee(s) Due, mailed October 5, 2004, which set a statutory period of reply of three (3) months. Accordingly, the application became abandoned on January 6, 2005. A Notice of Abandonment was mailed May 5, 2005.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,¹
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.²

¹ In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

The instant petition continues to lack item(s) (3).

The renewed petition includes a Declaration of John Cooper, one of the three inventors, that states, "I was not aware that the '785 Application had gone abandoned until February 2008." It is unknown if all three inventors, John Arthur Cooper, Sarah Catherine Fry and Bruce Edward Johnsen, had any knowledge that (1) the application had been allowed and/or (2) the application had been abandoned. This information was not included in the renewed petition. Further, Mr. Cooper's Declaration also includes the statement, "I do not recall Mr. Brown informing me at any time that the '785 Application was going to be abandoned, or that it had been abandoned." This statement would imply that there was some contact between Mr. Cooper and Mr. Brown. It is further unclear what Mr. Cooper knew from the time the application went abandoned on January 6, 2005 until February 2008.

Petitioner may wish to pursue reinstatement of the patent under the unavoidable provisions of 37 CFR 1.137(a). A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); **(3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable;** and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

Further correspondence with respect to this matter should be addressed as follows:

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Window located at: U.S. Patent and Trademark Office Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-8300 ATTN: Office of Petitions

Any questions concerning this matter may be directed to Joan Olszewski at (571) 272-7751.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

² See MPEP 711.03(c)(III)(C) and (D).